

# **Duty of Care in Czech and German Civil Law**

## **Abstract**

The thesis deals with the importance of duties to prevent damages (duties of care) in Czech civil law. It focuses on detailed analysis of a few provisions of the Czech Civil Code. The main attention is focused on s. 415 of the Civil Code (Act No. 40/1964 Coll, the Civil Code, as amended; “OZ”) establishing “the general duty of care”. Findings about duties of care in the Civil Code are compared to a system of duties of care in German law of delict and additionally discussed using tools of economic analysis of law. The paper results in recommending changes in wording and interpretation of the duties of care and their comparison with the wording established by Act No. 89/2012 Coll., Civil Code (“NOZ”), effective from 1 January 2014.

Chapter One examines development of interpretation of main provisions of OZ establishing duties of care. It briefly analyzes basic aspects of law of delict of OZ. It makes use of these findings in order to describe a position of duties of care in law of delict and limits of their interpretation. The main imperfections of their interpretation are illustrated on a couple of judicial decisions.

Chapter Two briefly describes the system of law of delict under the German Civil Code (“BGB”). The chapter explores criteria of application of duties of care in German civil law which are completely set out by judiciary and jurisprudence. The findings are used for a comparison with criteria applied for establishing a duty of care by the Czech judiciary.

Chapter Three analyzes the provisions of NOZ dealing with duties of care using the results from the first and second chapter. The chapter describes the reform of law of delict in detail and comments on particular provisions designated for preventing damages.

The thesis is concluded by Chapter Four outlining the economic analysis of law of delict and its preventive function. The contribution of this chapter lies in a different point of view on duties of care. Some of the findings from the previous chapters are corrected and some of them are supported by this chapter.